

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA

UNITED STATES OF AMERICA,

Plaintiff,

v.

HOUSTON JAMES KIRKALDIE,

Defendant.

Case No. 1:18-cr-199

**UNITED STATES' RESPONSE TO
MOTION FOR FURLOUGH TO
ATTEND TREATMENT**

The United States of America, by Drew H. Wrigley, United States Attorney for the District of North Dakota, and Rick L. Volk, Assistant United States Attorney, in response to the Defendant's Motion for Furlough to Attend Treatment at the Parshall Resource Center. The United States opposes the motion, and requests that it be denied in all respects.

The Defendant has pleaded guilty to a Conspiracy to Distribute and Possess with Intent to Distribute Methamphetamine (50 grams or more – actual) in this case, and is pending sentencing (currently set for July 31, 2019). His anticipated Guideline sentencing range is expected to be 120 months. Even with a reduction from that range, the United States will be recommending a sentence of imprisonment beyond that which the Defendant has served to date. Therefore, he is subject to mandatory detention pending sentencing, absent extraordinary and compelling reasons. See 18 U.S.C. § 3143(a)(2). The Defendant has not articulated any extraordinary or compelling reason to allow release pending sentencing.

Further, the Defendant is not a good candidate for release. In 2015, the Defendant was convicted of Distribution of Methamphetamine and Conspiracy to Distribute Methamphetamine in United States District Court for the District of North Dakota, case number 4:14-cr-049. He was sentenced to 48 months imprisonment, and 3 years of supervised release. The Defendant was released from imprisonment and began his term of supervision on or about March 22, 2017. A petition to revoke his supervised release was filed alleging numerous violation of his conditions of supervision, to include the use of alcoholic beverages on multiple occasions, commission of new criminal offenses (DUI, DUS), failure to report for drug testing, and failure to submit to breath testing for use of alcoholic beverages. (Dkt. 64, Case No. 4:14-cr-049) In May 2018, the Defendant was arrested on the petition, but subsequently released on conditions pending the revocation hearing, thereby allowing him to attend chemical dependency treatment. (Dkt. 70, Case No. 4:14-cr-049) The Defendant failed to appear for his revocation hearing on July 18, 2018, as scheduled, and failed to maintain contact with his supervising probation officer. A bench warrant for his arrest was issued following his failure to appear for the revocation hearing. (Dkt. 78, Case No. 4:14-cr-049) While he was a fugitive on that warrant, the Defendant committed the instant offense conduct in this case. As a result, the Defendant is not an appropriate candidate for release to treatment pending sentencing.

Finally, the Defendant previously requested a furlough from this Court to attend a chemical dependency evaluation at the Circle of Life in New Town, ND. That motion was denied by Magistrate Judge Charles Miller on March 1, 2019, based upon the nature

of his pending charges and the presumption of detention, his criminal history, his history of noncompliance with the court's orders, and his failure to appear for the revocation hearing on July 16, 2018. (Dkt. 23, Case No. 1:18-cr-199). The Defendant presents no other reasons for release than were presented to the Court when the motion for furlough was filed earlier in this case.

Based on the foregoing, the United States respectfully requests this Court deny the Defendant's motion.

Dated: June 20, 2019.

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United States Attorney

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